

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

In Re: FEMA TRAILER
FORMALDEHYDE PRODUCTS
LIABILITY LITIGATION

MDL NO. 07-1873

SECTION "N" (5)

THIS DOCUMENT RELATES TO
ALL CASES

ORDER AND REASONS

Before the Court is the Defendant United States of America's Motion for a Protective Order to Prevent Plaintiffs' Deposition of Harvey E. Johnson, Jr., Former FEMA Deputy Administrator and Chief Operating Officer (Rec. Doc. 1756). After considering this motion, the memoranda filed by the parties (including the supplemental memoranda at Rec. Docs. 2600 and 2577), and the applicable law, the Court rules as set forth herein.

On June 24, 2009, the Court issued an Order and Reasons (Rec. Doc. 1939), taking this motion under advisement. The Court noted that it would revisit the issue after the parties took the depositions of the following three individuals: Kevin Souza, David Garratt, and Michael Lapinski. These depositions have now been completed.

It should be noted that, throughout their memoranda, Plaintiffs argue that the taking of Admiral Harvey Johnson's deposition is necessary so that they may oppose the Government's Motion to Dismiss (Rec. Doc. 1545). That motion, however, has now been denied by this Court (See Rec. Doc. 2621). Thus, the Court now considers this motion to

the extent that Admiral Johnson's deposition may be necessary and relevant for Plaintiffs to prove liability against the Government at trial.

In their supplemental memoranda, Plaintiffs identify four topics about which deponents Souza and Lapinski claimed that only Admiral Johnson would know. These topics include:

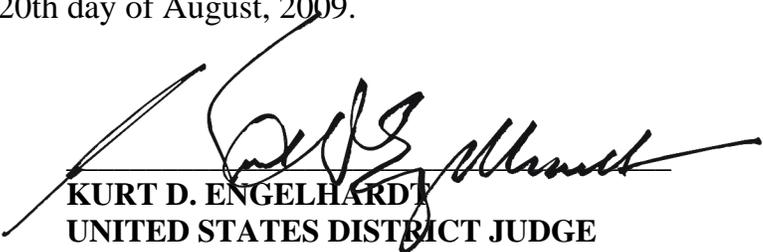
- (1) The reasoning behind Admiral Johnson's request for a meeting with Chief Paulison, Public Affairs, Legislative Affairs, and Legal Affairs to consider FEMA's "public position" as it relates to the formaldehyde issue. (See Rec. Doc. 2577, p. 3; Exhibit A to Rec. Doc. 2577; Exhibit B to Rec. Doc. 2577, p. 111).
- (2) The reasoning behind Admiral Johnson's request that Legal affairs participate in the above-mentioned meeting. (See Rec. Doc. 2577, p. 3).
- (3) Whether the OGC advised Admiral Johnson to keep the information discussed in the above-mentioned meeting within the "decision group." (See Rec. Doc. 2577, p. 4; Exhibit C to Rec. Doc. 2577).
- (4) What were Admiral Johnson's concerns and his reasoning behind delaying the testing from October 2007 until December 2007. (Rec. Doc. 2577, p. 5; Exhibit E to Rec. Doc. 2577, pp. 54-55).

The Court fails to see how the first three inquiries are relevant in proving liability against the Government, i.e. how answers to these would tend to prove or disprove any fact which might assist in establishing liability or overcoming the discretionary function defense. The facts are thusly established: In June or July 2007, Admiral Johnson

requested such a meeting, which was to include participation by counsel, and which discussion was not broadcast outside of the participants. The relevant inquiry surrounds FEMA's actions, both in having such a meeting and those taken as a result of such meeting. Therefore, as for the last inquiry, this information appears to be relevant and discoverable. Because Admiral Johnson is the only individual who can attest to his concerns and reasoning behind delaying the testing from October 2007 until December 2007, he shall provide this information to Plaintiffs. However, the Court will not require that he sit for a live deposition. Within 15 days of the entry of this Order and Reasons, Admiral Johnson shall provide his response to the following question in writing, under oath: "What were Admiral Johnson's concerns and his reasoning behind delaying the testing from October 2007 until December 2007." Accordingly,

IT IS ORDERED that the **Defendant United States of America's Motion for a Protective Order to Prevent Plaintiffs' Deposition of Harvey E. Johnson, Jr., Former FEMA Deputy Administrator and Chief Operating Officer (Rec. Doc. 1756)** is **GRANTED IN PART and DENIED IN PART** as stated herein.

New Orleans, Louisiana, this 20th day of August, 2009.


KURT D. ENGELHARDT
UNITED STATES DISTRICT JUDGE